LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 24 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1962

No. 74

LONG ISLAND LIGHTING COMPANY,
PHILADELPHIA ELECTRIC COMPANY, and
THE UNITED GAS IMPROVEMENT COMPANY, *Petitioners*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR LONG ISLAND LIGHTING COMPANY, PHILADELPHIA ELECTRIC COMPANY, AND THE UNITED GAS IMPROVEMENT COMPANY

DAVID K. KADANE
EDWARD M. BARRETT
BERTRAM D. MOLL
250 Old County Road
Mineola, New York
Attorneys for Long Island Lighting Company

MORGAN, LEWIS & BOCKIUS
Philadelphia-Washington
Of Counsel

VINCENT P. McDEVITT
SAMUEL GRAFF MILLER
HENRY P. SULLIVAN
1000 Chestnut Street
Philadelphia 5, Pennsylvania
Attorneys for Philadelphia Electric Company

J. DAVID MANN, JR.
WILLIAM W. ROSS
JOHN E. HOLTZINGER, JR.
1120 Connecticut Avenue
Washington 6, D. C.
Attorneys for The United Gas Improvement Company

August 25, 1962

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Statute Involved	2
Question Presented	6
Statement	6
Summary of Argument	7
Argument	
I. Respondent Has Unlawfully Deferred Application of the Rate Provisions of the Natural Gas Act to Independent Producers for an Indefinite Period	11
II. Gas Consummers Will Be Severely Injured by the Hiatus in Regulation Resulting from Respondent's Order	15
A. Respondent's Refund Powers Offer Inadequate Protection Against Mounting Producer Increases	16
B. Gas Consumers Will Be Severely Injured by Existing High, Non-Refundable Rates as a Result of the Indefinite Deferral of Regulation Under Section 5(a) of the Act	20
III. Decision of the Pending Major Producer Section 5(a) Cases Offers the Only Practical and Available Method of Interim Rate Regulation	26
A. Decision of Section 5(a) Cases Would Provide Substantial Consumer Protection and Further Respondent's Long-Range Program of Producer Regulation	26
B. Respondent Would Deny Procedural Due Process and Violate the Substantive Standards of the Natural Gas Act If It Sought To Use Its SGP61-1 Price Levels To Set Just and Reasonable Rates	29
Conclusion	32

Page

APPENDIX A—Current Status of Major Independent Producer Consolidated Rate Cases Initiated by FPC 33

APPENDIX B—Phillips Petroleum Company Section 4(e) Rate Suspension Proceedings Not Consolidated with Docket Nos. G-1148 et al. and Pending as of December 31, 1961 34

APPENDIX C—Comparison of Phillips' Prices Under "New" Rate Schedules, Not Included in Docket Nos. G-1148 et al., with Area Rate Standards Set Forth in Statement of General Policy No. 61-1 as amended .. 38

APPENDIX D—Distribution by Price Class of Average Prices Paid for Natural Gas by Interstate Pipelines in South Louisiana in 1960 41

1960 South Louisiana Jurisdictional Sales by 13 Producers at Prices Above 21.25 Cents 42

TABLE OF CASES

COURT DECISIONS:

American Trucking Ass'ns. v. U. S., 355 U.S. 141 15
Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378 (1959) 9, 12, 20, 22
Bel Oil Co. v. FPC, 255 F.2d 548 (5th Cir. 1958), *cert. denied*, 358 U.S. 804 31
City of Detroit v. FPC, 230 F. 2d 810 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829 31
Colorado-Wyoming Gas Co. v. FPC, 324 U.S. 626 29
Episcopal Theological Seminary v. FPC, 269 F. 2d 228 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 895 31
Ford Motor Company v. N.L.R.B., 305 U.S. 364 21
Forest Oil Co. v. FPC, 263 F. 2d 622 (5th Cir. 1959) .. 31
Hotel Employees Local v. Leedom, 358 U.S. 99 (1959) 25
ICC v. J-T Transport Co., 368 U.S. 81 29
ICC v. U. S. ex rel. Humbolt Steamship Co., 224 U.S. 474 25

Page

Mississippi River Fuel Corp. v. *FPC*, 252 F. 2d 619 (D.C. Cir. 1957), *cert. denied*, 355 U.S. 904 31
Office Employees Int'l Union v. *N.L.R.B.*, 353 U.S. 313 (1957) 25
Ohio Bell Telephone Co. v. *Public Utilities Comm'n of Ohio*, 301 U.S. 292 29
Optical Workers Local v. *N.L.R.B.*, 227 F. 2d 687 (5th Cir. 1955), *cert. denied*, 351 U.S. 963 25
Phillips Petroleum Company v. *Wisconsin*, 347 U.S. 672 ..... 7, 12, 30
Public Service Commission of New York v. *FPC*, 287 F. 2d 143 (D.C. Cir. 1960) 21
Public Service Commission of New York v. *FPC*, 287 F. 2d 146 (D.C. Cir. 1960), *cert. denied*, 365 U.S. 880 21
Public Service Commission of New York v. *FPC*, 361 U.S. 195 (1959) 20
Schaffer Transportation Co. v. *U. S.*, 355 U.S. 83 15
Sauray Mid-Continent Oil Co. v. *FPC*, 364 U.S. 137 .. 31
United Gas Improvement Co. v. *FPC*, 283 F. 2d 817 (9th Cir. 1960), *cert. denied*, 365 U.S. 879 20
United Gas Improvement Co. v. *FPC*, 287 F. 2d 159 (10th Cir. 1961) 21
United Gas Improvement Co. v. *FPC*, 290 F. 2d 133 (5th Cir. 1961), *cert. denied*, 368 U.S. 823 ..... 21, 30, 31
United Gas Improvement Co. v. *FPC*, 290 F. 2d 147 (5th Cir. 1961), *cert. denied*, 366 U.S. 965 21

FEDERAL POWER COMMISSION CASES:

Continental Oil Co., et al., Docket Nos. G-11024, *et al.*, 27 FPC — 23
Texaco-Seaboard, Inc., et al., Docket Nos. G-13169, *et al.* 21, 24
Union Producing Co., 24 FPC 841 31

STATUTES:

28 U.S.C. 1254 (1) 2
29 U.S.C. 142 (1) 25
29 U.S.C. 160 (a) 25
Natural Gas Act, 52 Stat. 821, as amended, 15 U.S.C. 717-717w 2

MISCELLANEOUS: Page

Hearings, Committee on Appropriations, House of Representatives, *Independent Offices*, 1963 .....14, 19

Petition of Federal Power Commission for Writ of Certiorari, *FPC* v. *Tennessee Gas Transmission Co., et al.*, No. 48, This Term 18

Report, Special Subcommittee on Legislative Oversight, House Commerce Committee, January 3, 1961 .. 18

IN THE

Supreme Court of the United States

OCTOBER TERM 1962

No. 74

LONG ISLAND LIGHTING COMPANY,
PHILADELPHIA ELECTRIC COMPANY, and
THE UNITED GAS IMPROVEMENT COMPANY, *Petitioners*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR LONG ISLAND LIGHTING COMPANY, PHILADELPHIA ELECTRIC COMPANY, AND THE UNITED GAS IMPROVEMENT COMPANY

OPINIONS BELOW

The opinion of the Court of Appeals (R. 410-430) is not yet reported. The opinion and order of the Federal Power Commission (R. 251-342) are reported at 24 F.P.C. 537, and the Commission's order denying rehearing (R. 395-404) is reported at 24 F.P.C. 1008. The decision of the presiding examiner (R. 35-217) is reported at 24 F.P.C. 590.

JURISDICTION

The judgment of the Court of Appeals affirming the Commission's orders was entered on November 30, 1961 (R. 431-432). The petition for a writ of certiorari was filed on February 28, 1962 and granted on May 14, 1962 (R. 432-434). The jurisdiction of this Court rests on 28 U.S.C. 1254(1) and § 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act, 52 Stat. 821, as amended, 15 U.S.C. 717-717w, provide:

> SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.
>
> (b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.
>
> (c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such

time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company,

but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect, and after full hearings either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof

to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

Section 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

QUESTION PRESENTED

Whether the Federal Power Commission, for reasons of administrative convenience, may indefinitely defer enforcement of Sections 4 and 5(a) of the Natural Gas Act by refusing to set just and reasonable rates for natural-gas producer sales in accordance with proven and established procedures, because it has chosen to embark upon an entirely new, unformulated and judicially untested method of producer rate regulation, when such indefinite deferral will cause massive and irreparable injury to the consuming public.

STATEMENT[1]

Petitioners are engaged in the distribution of natural gas to some 1,300,000 customers in the New York and Philadelphia metropolitan areas. Petitioners obtain their natural gas requirements from certain interstate gas pipeline companies, which in turn purchase, either directly or indirectly, the major part of their natural gas supplies from independent natural gas producers, including Phillips Petroleum Company. Accordingly, the rates charged by Phillips and other independent producers directly affect petitioners' gas costs and the rates which they must charge the ultimate domestic consumer.

When the Federal Power Commission reinstituted the general investigation of Phillips' rates pursuant to

---

[1] Petitioners have been permitted to read the brief filed in No. 71 by petitioners State of Wisconsin, Public Service Commission of Wisconsin, and Public Service Commission of the State of New York (hereafter Wisconsin-New York brief). Petitioners are in full agreement with the statement appearing at pages 6-15 of that brief, and to avoid burdening the Court with repetitious matter, they would hereby incorporate and adopt that statement, as though fully set out herein.

the mandate of this Court in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, petitioners herein were permitted to intervene in the proceedings and participated actively in all phases. Petitioners presented testimony and other evidence bearing on the appropriate methods for determining Phillips' costs (R. 44-45). The regulatory methods sponsored by petitioners were adopted in large part by the Examiner and the Commission in determining Phillips' 1954 costs in its decision here (24 F.P.C. 623-723).

When the Commission in its opinion herein (R. 251, 323-329) determined not to fix Phillips' just and reasonable rates, for past and future periods, on this record (augmented if necessary) and terminated the proceedings, petitioners, together with the States of Wisconsin, New York and California, sought review in the Court of Appeals. That court, Judge Fahy dissenting, sustained the Commission's action abandoning, for an indefinite period, any effort to regulate the rates of Phillips, as well as other major independent gas producers, under Sections 4 and 5(a) of the Natural Gas Act.

SUMMARY OF ARGUMENT

I. This Court in its *Phillips* decision directed Respondent to regulate independent producers under Sections 4 and 5(a), the rate provisions of the Natural Gas Act. Respondent for several years sought to obtain legislation reversing the *Phillips* mandate. When it failed in this, it initiated combined Section 4(e) and 5(a) investigations of the rates of the twenty four largest producers which sell at wholesale over half of the gas in interstate commerce. Most of these cases were in advanced stages when Respondent terminated

the *Phillips* proceeding announcing its intention of abandoning individual major producer rate regulation. Respondent's stated reason was that since it intended to shift to another (and presumptively better) form of regulation, it would not be feasible to continue the major producer Section 4-5(a) cases.

Respondent's decision to abandon an existing and viable form of regulation before the gestation of any substitute has resulted in a complete suspension of producer regulation under Sections 4 and 5(a) of the Gas Act for an indefinite period. Since initiation of the major producer proceedings, Respondent has not decided a single Section 5(a) case of any consequence. With a few exceptions, it has not determined the validity of any rate increase under Section 4 of the Gas Act. Respondent has admitted that it will be many years before its proposed "area" regulation could be effective. It is certain, therefore, that this deliberate hiatus in regulation will continue for a long and indefinite period.

II. Petitioners do not seek to force a particular method of regulation on Respondent, and in fact affirmatively support the "area" proceeding experiment as a possible long range solution to producer rate making problems. As public utilities, however, Petitioners must be concerned that their existing customers receive protection against current, sharply increased field price levels. Respondent offers only its powers over initial rates under Section 7, and its practice of subjecting rate increases to possible refund under Section 4(e), as an interim substitute for the protection of lawful rates tested under Sections 4 and 5(a) contemplated by the Gas Act. Neither power offers adequate protection to consumers; nor is either a valid substitute

for the effective rate regulation contemplated by Congress.

A. Respondent admittedly has not and will not determine the lawfulness of producer rate increases for the indefinite future, but will merely subject them to a potential refund obligation, now accumulating at the rate of approximately $158 million a year. The fact that this amount is theoretically refundable does not mean that consumers are protected against these increased and possibly unlawful rates. Much experience with pipeline regulation demonstrates that when refunds are accumulated over long periods, it is practically or politically impossible to obtain restitution of the entire amount found unlawful; and a compromise is effected to avoid bankrupting the regulated company. Even assuming that full refunds could be obtained, Respondent has admitted to this Court that consumers are entitled to current protection against unjustified rates, not merely the expectation of refunds—possibly to other consumers—sometime in the future.

B. Further, Respondent's Section 4(e) refund powers cannot reach many high, non-refundable rates authorized by the Commission under an erroneous view of its responsibilities, before *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, and decisions following that case. While Respondent now employs its so-called SGP61-1 rate levels to condition initial rates, these rate levels were promulgated without hearings or findings, and represent the highest level reached by interstate rates in each producing area after five years of non-regulation. Hence, they are manifestly not "just and reasonable" rates, but merely a stop-gap "hold the line" device to prevent a

further rise in field prices. Reliance on these levels would not prevent consumers from paying indefinitely sharply increased and probably unlawful rates, which are not refundable even in theory. It follows that only affirmative application of Section 5(a) will provide protection against these existing rates; but this, as we have seen, Respondent has put aside indefinitely.

Respondent of course has discretion to select a regulatory method. Where Congress has told it to regulate, Respondent does not have discretion to decline indefinitely to regulate, in order to meet its administrative problems. This generation of consumers as well as the next is entitled to protection.

III. A. Decision of the almost completed major producer cases would provide substantial protection to consumers pending development and application of an area method of regulation. These cases, as pointed out, involve rates covering over 50% of interstate gas wholesales, and establishment of just and reasonable rates for this volume of gas would profoundly affect existing rate levels. Respondent's order here leaves no doubt that it is entirely feasible to decide these cases, and many of them have already been decided by Respondent's trial examiners. The cost information derived from the cases would provide both a check and a foundation for future area rates.

B. The existing Section 4-5(a) cases, furthermore, offer the only feasible way at this time of applying the Gas Act rate standards to producer rates. As stated, these cases are virtually completed, and no substitute method has been formulated, much less applied. The court below mistakenly assumed that Respondent's stop-gap SGP61-1 rate levels *were* "just and

reasonable" rates, despite Respondent's clear and repeated disavowals. Actually, these rates, as has been pointed out, in each instance represent only the highest, untested field price previously authorized by Respondent, and were issued without hearing or findings. Hence, it seems clear that they would meet neither the substantive standards of the Gas Act nor the standards of procedural due process, if used to set lawful rates.

It follows that Respondent has abused its discretion in abandoning a viable, although possibly imperfect, method of applying the Act's rate provisions which would provide substantial consumer protection, before a working substitute is at hand.

ARGUMENT

I

RESPONDENT HAS UNLAWFULLY DEFERRED APPLICATION OF THE RATE PROVISIONS OF THE NATURAL GAS ACT TO INDEPENDENT PRODUCERS FOR AN INDEFINITE PERIOD

Respondent has left no doubt that it has deliberately deferred regulation of producer field prices under Sections 4(e) and 5(a) of the Natural Gas Act (*supra*, pp. 3-5) for an indefinite period. It has implied this in its order here (R. 256-269, 397), and it has decided virtually no producer cases under these sections since that order issued (see *infra*, p. 12). Pending fruition of its area approach to producer rate making, Respondent has deferred any attempt at positive regulation, seeking only to "hold the line" by conditioning producer "initial" prices under Section 7 of the Act (Br. Opp. p. 11). Respondent's reasons for abandoning one form of regulation before a substitute is available have not been fully articulated (see Br.

Opp. pp. 15-19; R. 262). However, one surmises that Respondent decided to abandon the individual Section 5(a) cases in order to restrict its work load so as to facilitate its long range experiment in "area" rate making. This amounts to making one generation of consumers pay for speculative benefits to a later one.

The Gas Act contemplates *effective* rate regulation, not merely a facade of regulation which provides no real consumer protection. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 682-3; *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378, 388. Respondent may argue, as it has in its brief opposing certiorari (p. 10), that it is not actually deferring producer rate regulation; that it has merely shifted to another permissible regulatory form. However, regulation under Section 4(e) of the Natural Gas Act (*supra*, p. 3) implies at a minimum investigations of filed rate increases, determination of "just and reasonable" nondiscriminatory rates, and the ordering of refunds where required. Section 5(a) regulation (*supra*, p. 5) similarly requires the prescription of future lawful rates. While the procedures followed in taking these steps could certainly vary, these are the minimum and essential steps in applying the standards imposed by Sections 4(e) and 5(a).

The Commission has not held a hearing on, much less decided, a single *Phillips* Section 4(e) increase since 1956 despite the 83 additional rate increases filed by that company, aggregating $22 million annually (App. B, *infra*, p. 37). It has also terminated Phillips' Section 5(a) case on the basis of 1954 cost despite a more than 50% increase in unit revenues since that

time.[2] Similarly, Respondent, with a few exceptions,[3] has not held hearings on the vast majority of pending individual producer Section 4(e) increases, despite the fact that, as we show *infra*, these now aggregate $158 million annually. It has not decided a single producer Section 5(a) case of any consequence. If this is not a deferral of producer rate regulation, it is difficult to understand what *less* Respondent could have been doing in this period.

This demonstrated hiatus in regulation has been going on for a number of years, and will certainly continue until such time as the area rate method has been formulated, judicially approved, and becomes a working reality. The court below recognizes that the various area proceedings may take from four to fourteen years to complete (R. 422). Respondent's Chairman, testifying before a subcommittee of the House Appropriations Committee on February 26, 1962, stated

---

[2] As Judge Fahy points out (R. 429):

> "Unless decided Phillips challenged rates are left undetermined under the standards of the Act since 1948, and apparently will continue to remain undetermined until some future day when new proceedings, now in an inchoate state with no end in sight, are concluded."

[3] Respondent has in effect ordered hearings on those major producer Section 4(e) increases which have been consolidated with the Section 5(a) rate investigations (see App. A, *infra*, p. 33, and *infra*, pp. 16-20). However, its order here indicated that it would terminate these proceedings without a determination of just and reasonable rates. Respondent has also directed hearings in a small number of individual Section 4(e) rate filings which presented the possibility of widespread triggering of other producer rate increases as a result of so-called "favored nation" clauses which are prevalent in producer contracts. See, e.g., *Union Producing Co.*, 24 F.P.C. 841.

(Hearings, Committee on Appropriations, House of Representatives, *Independent Offices, 1963*, p. 573):

> "MR. SWIDLER. With respect to the producer cases, we are launching into what is really an important experiment in administrative devices in the area rate proceedings. Each of the two area rate proceedings which have been established involves a consolidation of literally hundreds of cases.
>
> "You would not expect that these cases which involve the fundamentals and the economics and finances of the natural gas side of the petroleum industry would move with great speed. They have not.
>
> "We are now using the *Permian Basin* case as the lead case for lack of personnel and no other reason. We are unable to make the same progress in the second of these proceedings, the *Southern Louisiana* case.
>
> "These are the two most important natural gas production areas. If we can set a pattern in these two cases, then they will move faster, and I think we are making progress, but it is progress in such a tremendous proceeding that it is progress that cannot be measured in days or months. It will take a year or two probably before we could hope to come out with the answer in the *Permian Basin* case.
>
> "On the *Louisiana* case, we would not really make a strong start until we get the money."

It should be borne in mind that the Permian and South Louisiana areas are only two of the twenty-three areas designated by Respondent in its SGP61-1 order (R. 348). Given the inevitability of judicial review of any order concluding these proceedings, the times suggested by the Court of Appeals are hardly exaggerated.

Petitioners have actively supported the area rate making approach as a long-range solution to many of the problems of producer rate making, on the key assumption that area rates will reflect the costs of producing gas so as to avoid windfalls to producers. Far from seeking to force a particular regulatory method on Respondent, Petitioners are concerned that the area proceedings be given every opportunity to develop into an effective program of field price regulation. Petitioners, as public utilities, are equally concerned, however, with the impact of four to fourteen years of non-regulation on their customers and themselves, even if they could be assured of effective regulation after that time. They shall show in section II, *infra*, that this impact is likely to be severe and irreparable.

As Judge Fahy emphasized repeatedly in dissenting (R. 427-430), while Respondent's discretion is broad, it cannot lawfully make the choice it apparently has made. Its lawful discretion does not permit the deliberate sacrifice of present consumer interest in a problematic effort to ease the regulatory burden, by suspending *pro tem* the application of Sections 4(a), 4(b), 4(c) and 5(a) of the Natural Gas Act to gas producers which make wholesales in interstate commerce. *Schaffer Transportation Co.* v. *United States*, 355 U.S. 83, 88-91; *American Trucking Ass'ns* v. *United States*, 355 U.S. 141, 149-150.

II

GAS CONSUMERS WILL BE SEVERELY INJURED BY THE HIATUS IN REGULATION RESULTING FROM RESPONDENT'S ORDER

There is an acute need for present, effective regulation of producer field prices which cannot be met despite Respondent's contrary suggestion (Br. Opp. 16-17) merely by subjecting mounting rate increases to

possible refund, and periodically conditioning initial rates. The price of non-regulation will be inevitable consumer injury.

A. Respondent's Refund Powers Offer Inadequate Protection Against Mounting Producer Increases

Phillips' current Section 4(e) increases subject to refund aggregate $22 million on an annual basis (App. B, *infra*, p. 37); and the cumulative amount undoubtedly is several times this figure. The total amount of producer rates now subject to refund has reached the staggering sum of $158,000,000 on an annual basis (1961 FPC Annual Report, p. 80) and the cumulative amount probably exceeds three quarters of a billion dollars.[4] If the rates governing only those sales involved in the Permian Basin area rate proceeding were reduced on an average by one penny, the total refund would approximate $8,600,000 (Exh. 118, FPC Dk. No. AR61-1).

The fact that these amounts are theoretically refundable does not mean that consumers are currently protected by the Commission's Section 4(e) powers. In the first place, experience in pipeline regulation has shown that when sellers are permitted over long periods to collect sums of this magnitude based on refundable rate increases, it is practically and even politically impossible to obtain full refunds, even if the rates are subsequently found unlawful.[5] Thus, while Respond-

---

[4] These figures include only the increased portion of the rates in question, and are not based on the assumption that the entire revenues are refundable.

[5] This well recognized fact places pressure on consumer representatives to make concessions to the seller rather than pay indefinitely the increased rates.

ent argues (Br. Opp. 19) that $74 million in Phillips' annual revenues is refundable, it staggers belief to assume that Respondent could or would make Phillips refund such an amount at one time, when these revenues have been absorbed into its business, and its operations and expansion based upon them for many years.[6] A classic instance of this practical limitation on the power of a regulatory body concerned a major natural gas pipeline company which faced bankruptcy as a result of accumulated refunds resulting from Respondent's inaction in passing upon its rate filings. As the Subcommittee on Legislative Oversight pointed out:

> "Because of the tremendous backlog of rate cases, the Commission has adopted the expedient of negotiating settlements of these rate cases, many of which involve scores of millions of dollars. In this situation the companies have the superior bargaining position. In one case, the *Colorado Interstate Gas Company* case, dockets Nos. G-2260, G-2576, and G-11717, the company used a plea of possible bankruptcy if the hearing examiner's recommendation was to be followed. There the hearing examiner had found the company's rates to be unjust and unreasonable and had his recommendations been carried out the company would have had to refund approximately $45 million. Upon its allegations to the newspapers that such an order would bankrupt the company, Commissioner Kline, one of the Commissioners who would have to participate in the final adjudication of the amount of the refund, participated in negotiating a settlement (Staff report, p. 92)." (Report,

[6] It is important to keep in mind that Respondent does not require segregation of amounts collected subject to refund. Such amounts can be treated in all respects indistinguishably from ordinary revenues (18 C.F.R. 154.102).

Special Subcommittee on Legislative Oversight, House Commerce Committee, January 3, 1961, p. 27.)

Secondly, even assuming that adequate refunds could be made, Respondent has recently argued in this Court that such refunds provide no protection to many consumers:

> "The decision [for which review is sought] seems to rest largely on the erroneous view that consumers are fully protected, albeit they continue to pay excessive rates, by the pipeline's ultimate obligation to refund the excess charges with interest. But, as the Commission has recognized, the protection afforded by refund provisions is by no means complete. Ours is a mobile society; those consumers of natural gas who pay excessive rates in a given area today are scattered as the months go by. For the ordinary consumer, even if he does not move, a daily increase in his cost of living is not offset by the prospect of receiving a lump sum sometime in the future. The Court has encountered this problem in the cases dealing with the disposition of funds impounded as a result of judicial stays of Commission rate reduction orders. Moreover, the inflationary impact of present day high rates is scarcely relieved by the possibility of refunds at an indeterminate date in the future." *F.P.C. v. Tennessee Gas Transmission Co., et al.*, No. 48 this term, Petition of Federal Power Commission for Writ of Certiorari, pp. 10-11. [Footnotes and citations omitted.]

Finally, a paramount aim of public utility regulation is to provide stability and predictability in the cost of basic community services. The prolonged collection of refundable rates throws into doubt the fundamental cost patterns of the gas distribution industry.

The expectations of people making business decisions within the industry and of the investing public are bound to be influenced by the price being paid, even though there is a statement—and the notation is all too often omitted—that the price is in dispute. As Respondent has pointed out in its recent prepared statement to the House Appropriations Committee (Hearings, *supra*, at 540, 589):

> "The welfare of the natural gas industry is also at stake. The inability of the Commission to master its problems with the techniques and funds heretofore available has resulted in over a billion dollars in rates which have been suspended. The pipelines and the producers are passing these charges along subject to refund. The consumers are paying the money but the industry suffers also. They do not know how much of the money they have taken will ultimately be determined to belong to them. They are handicapped in their financing and in the sale of their securities. It is true that the unprecedented difficulty of the problems of regulation of the producers provide an excuse for the delays of regulation by the Federal Power Commission. Nevertheless, this is a responsibility which the Federal Government has assumed and which it is honor bound to discharge.
>
> * * * * *
>
> "Delay in disposition of suspended rates causes hardships on both consumers and companies. The ownership of million of dollars collected from distributors and in turn from consumers under suspended rate schedules remains in doubt. Under such circumstances the companies may find it difficult to raise funds necessary for expansion since their financial status is in doubt until the rate cases are concluded. Rate payers are denied the use of funds collected as excessive rates."

The Natural Gas Act expressly recognizes this danger when it requires (Section 4(e), *supra*, p. 5) that Respondent "give to the hearing and decision of [rate] questions preference over other questions pending before it and decide the same as speedily as possible."

Hence, the mere piling up of refundable producer revenues is no substitute for the expeditious application of the Section 4(a) and 4(b) standards to increased rates filed under Section 4(e). Yet this is absolutely all Respondent offers as interim protection under the "just and reasonable" standard, pending the coming, hopefully, of definitive area rates.

B. Gas Consumers Will Be Severely Injured By Existing High, Non-Refundable Rates as a Result of the Indefinite Deferral of Regulation Under Section 5(a) of the Act

Respondent has a statutory charge not only to pass upon the validity of rate increases but upon complaint or its own motion to investigate the lawfulness of existing, non-refundable rates under Section 5(a) of the Natural Gas Act.

Respondent's decision to defer indefinitely the testing of existing major producer rates under Section 5(a) of the Act has had and will have until corrected a severe adverse impact on gas consumers. As this Court knows, Respondent beginning in 1956 authorized under Section 7 of the Act a large number of extremely high priced sales without rate conditions, under the mistaken view that it had no responsibility for initial rate levels. *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (1959); *Public Service Commission of New York* v. *FPC*, 361 U.S. 195 (1959); *United Gas Improvement* v. *FPC*, 283 F. 2d 817 (9th Cir. 1960), *cert. denied*, 365 U.S. 879,

881; *Public Service Commission of New York* v. *FPC*, 287 F. 2d 146 (D.C. Cir. 1960), *cert. denied*, 365 U.S. 880, 882; *Public Service Commission of New York* v. *FPC*, 287 F. 2d 143 (D.C. Cir. 1960); *United Gas Improvement* v. *FPC*, 287 F. 2d 159 (10th Cir. 1961); *United Gas Improvement* v. *FPC*, 290 F. 2d 133 (5th Cir., 1961), *cert. denied*, 368 U.S. 823; *United Gas Improvement* v. *FPC*, 290 F. 2d 147 (5th Cir., 1961), *cert. denied*, 366 U.S. 965. Respondent has belatedly recognized its error, and its obligation insofar as possible to undo the resulting injury to consumers, stating:

> "* * * Obviously the substantive errors were ours in accepting the arguments propounded by the producer-applicants; equally obvious, the New York Public Service Commission and the Eastern Seaboard Companies have consistently, publicly, and in the final analysis successfully urged the error of these arguments. The courts having lain bare the errors, it remains our task equitably to correct them. See *Ford Motor Company* v. *N.L.R.B.*, 305 U.S. 364.
>
> * * * * *
>
> "* * * Patently, our unconditional certificate order was erroneous in law and could not have been sustained on judicial review had we failed to grant rehearing. Having granted rehearing we should voluntarily correct the error just as if the courts had compelled us to do so. See *Ford Motor Co.* v. *N.L.R.B.*, 305 U.S. 364, 375." (Order Denying Rehearing, *Texaco-Seaboard Inc., et al.*, Docket Nos. G-13169, *et al.*, March 7, 1962).[7] [Footnote omitted]

Although Respondent is thus attempting to protect the public in those few initial service cases which have

[7] This order was issued on remand ordered in *Public Service Commission of New York* v. *FPC*, 361 U.S. 195.

been appealed, unfortunately it has also authorized a substantial number of extremely high priced sales which, not being appealed, have never been tested under the standards either of Section 7 or Section 5(a) of the Act. Thus, Phillips is at present making sales at non-refundable rates which produce revenues exceeding by $3,000,000 annually those which would be produced if its rates were consistent with Respondent's increased field price levels in SGP61-1 (App. C, *infra*, pp. 38-40).[8] Respondent's decision here postpones indefinitely any scrutiny of the lawfulness of these rates under Section 5(a) of the Gas Act. Such scrutiny when it does come will, of course, only be prospective in nature. *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 389.

It is true that Respondent is now—though not earlier—testing Phillips' proposed initial rates under its SGP61-1 "initial" rate levels (R. 348). However, these levels, as we show *infra*, pp. 29-32, are merely the highest untested, previously authorized rates in each area, and are not necessarily "just and reasonable" and "non-discriminatory" rates.

The situation is even more extreme for the major producers as an aggregate. Taking South Louisiana as an example, Appendix D (*infra*, [illegible]) shows that over 55% of South Louisiana "jurisdictional" gas is now flowing at prices which exceed Respondent's current "initial price" ceiling (R. 348)! Over 94% is flowing at prices which exceed Respondent's "increased price" ceiling, which has thus become a complete dead

[8] The annual revenues from the new rates not subject to Section 4(e) refunds exceed those which would be produced by Respondent's initial field price levels by $480,000 (App. C, *infra*, pp. 38-40).

letter. Over 70% is flowing at prices which exceed the price Respondent found "in line" for the so-called CATCO gas, on remand from this Court's decision in *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378 (*Continental Oil Co., et al.*, Docket Nos. G-11024, 27 F.P.C. . . .). Thus, even accepting Respondent's completely untested SGP61-1 price levels (but see Wisconsin-New York Br. 29-33, and *infra*, pp. 29-33), field prices have long since vaulted above these levels in South Louisiana, which is today the most important of Respondent's gas production areas.

It should be realized that gas consumers *cannot* be protected against these questionable prices by Respondent's refund powers since much of these revenues are not refundable, even in theory. Of the total 1960 revenue received by the 13 major producers whose Section 5(a) rate cases are near completion, about $250,000,000 (roughly 83 per cent) is now being collected not subject to any refund obligation (Wisconsin-New York Br., App. A, p. 49). A very substantial percentage of this non-refundable revenue is derived from sales at prices in the 20 to 24 cent range which exceed the applicable Commission area price levels (R. 348); and almost all is derived from rates which represent sharp increases over average price levels in the particular area (*ibid.*). Such sharply increased prices are *prima facie* suspect and in all probability unlawful.

Taking South Louisiana again as the most important example, nearly one-third of 1960 jurisdictional sales by the foregoing 13 producers at prices in excess of 21.25 cents per Mcf (Respondent's current initial price "ceiling") are probably not subject to refund. These sales aggregate approximately 436,000,000 Mcf, or 38 per cent, of total South Louisiana sales above this price level which amounted

to 1,128,000,000 Mcf (App. D, *infra*, p. 42).[9] It should also be noted, as previously stated, that 90 per cent of the *total* 1960 sales volume in South Louisiana was sold at more than 16 cents per Mcf, which is approximately the Commission's current South Louisiana "old gas" ceiling of 15.75 cents derived a few years earlier as an *average* price in this area. (R. 348; App. D, *infra*, p. 41).

While it is impossible, of course, to compute the exact amount of total jurisdictional revenues which is probably being collected unlawfully and without possibility of refunds, there can be no doubt that the amounts are of enormous magnitude.

We have seen, *supra*, that the Section 4(e) refund power provides totally inadequate protection against unjustifiable rate increases.[10] However, the only rem-

---

[9] The condition of F.P.C. records makes it impossible to do more than estimate the exact jurisdictional volumes being sold not subject to refund, since the only available data are derived from the pipeline "Form 2" reports which do not invariably segregate jurisdictional and intrastate sales. Hence, the foregoing figures (and those in Appendix D, *infra*, p. 42) may overstate the jurisdictional revenues not subject to refund, and must be taken as approximations. However, the actual volumes sold not subject to refund would be of the same order of magnitude.

[10] As Respondent stated in a recent order (*Texaco Inc.*, Docket Nos. G-13169, *et al.*, July 30, 1962, p. 4):

> "• • • In recent years sellers and buyers of gas produced in the South Louisiana area have been plagued by an unusually high measure of uncertainty as to price. Such uncertainty injures all interested segments of the public. For the prices which a producer can charge and may retain largely determine the costs he can reasonably incur; and the public relies upon intelligent planning, vigorous enterprise, and repeated new investments by independent producers. Drastic uncertainties as to price impair the producer's ability soundly to undertake new ventures and thus constrict his capacity to serve the public." [Footnote omitted]

edy of any kind for these high, non-refundable prices lies in Respondent's Section 5(a) prospective rate testing powers, but these, as we have seen, have been laid aside indefinitely. Thus, the Commission's deferral of regulation under Section 5(a), if permitted to continue, will result in a significant and irretrievable increase in basic fuel costs borne by the ultimate consumer, wholly without consideration as to whether such an increase is consistent with the standards of the Natural Gas Act.

It follows that gas consumers will be injured, and severely injured, if Respondent continues in its attempt to solve its administrative difficulties by abandoning an existing form of regulation prior to the gestation of any substitute. While Respondent has discretion to choose a regulatory method, it does not have discretion to decline to regulate a class of natural gas companies Congress has said it should regulate. *Office Employees Int'l Union* v. *N.L.R.B.*, 353 U.S. 313 (1957); *Hotel Employees Local* v. *Leedom*, 358 U.S. 99 (1959), holding that the Labor Board abused its discretion in declining to apply the Labor Management Relations Act to specified classes of employees.[11] See also *I.C.C.* v. *U.S. ex rel. Humbolt Steamship Co.*, 224 U.S. 474, 484.

---

[11] The Labor Board has jurisdiction over unfair labor practices "affecting commerce" (29 U.S.C. 160(a)), so that presumably it has some area of discretion in determining what comes within this standard. See *Optical Workers Local* v. *N.L.R.B.*, 227 F. 2d 687 (5th Cir. 1955), *cert. denied*, 351 U.S. 963, and 29 U.S.C. 142(1). Respondent, to the contrary, is directed to regulate *all* wholesales in interstate commerce regardless of their "effect", and *a fortiori* does not have the discretion to exempt a class of wholesale sellers.

III

DECISION OF THE PENDING MAJOR PRODUCER SECTION 5(a) CASES OFFERS THE ONLY PRACTICAL AND AVAILABLE METHOD OF INTERIM RATE REGULATION

Respondent, as we have seen, has refused as a matter of regulatory policy to determine the lawfulness of Phillips' current rates, on the ground that this can properly await the outcome of the area rate proceedings. We have shown that such a deferral of regulation will seriously injure gas consumers. We shall show below that testing Phillips' and other major producers' current rates against the standards of the Natural Gas Act would in fact provide substantial interim protection to gas consumers during the indefinite period pending development of effective area rates—protection which can be provided, practically speaking, in no other way.

A. Decision of Section 5(a) Cases Would Provide Substantial Consumer Protection and Further Respondent's Long-Range Program of Producer Regulation

Hearings have been completed in twelve major producer Section 5(a) cases involving (with Phillips) about 32% of current interstate sales by volume of gas (App. A, *infra,* p. 33). Examiners' decisions have been issued in four of these cases, and three have recently been settled resulting in reductions in existing rates and refunds for past periods (App. A, *infra,* p. 33). In addition, Respondent has completed its field investigation of five more major producers whose sales by volume when added to the foregoing thirteen encompass about one-half of all interstate gas (App. A, *infra,* p. 33).

There is no doubt that Respondent could decide these cases, as is evidenced by its decision in *Phillips* and

the four examiners' decisions applying the *Phillips* methods. As Judge Fahy has pointed out in dissenting (R. 427, 429-430):

> "These cases need not be treated as if they were ventures initiated in search of an ideal method of regulating the rates of independent gas producers. Having in mind the history of these proceedings, and the primary congressional purpose of consumer protection, it seems to me that decisions on the present record, supplemented as may be found to be reasonably necessary, would be far more likely to approximate fulfillment of the purposes of the Act than are the termination order and the resulting situation.
>
> * * * * *
>
> "The Commission has actually found Phillips' cost of service on the basis of the record made and has arrived on the same record at a proper rate of return, stating 'this is clearly a lawful way to determine rates for Phillips as illustrated by the *City of Detroit* case, . . . and under the present record is the only possible method . . .' In this manner the Commission has come so close to doing what it says it should not do as to demonstrate that it is able to do what it has failed to do."

Decisions in Phillips and in the other cases involving about one-half of interstate gas would provide substantial interim protection during the possibly extended period before area rates can be made effective. If the trial examiners' findings are any guide, such decisions would result in substantial across-the-board reductions in existing high rate levels, refunds under Section 4(e) of large amounts unlawfully collected, and elimination of unduly discriminatory rate differentials. These results would of course provide significant benefits to gas consumers in themselves. Even more important collateral benefits could be expected. The

determination of lawful rates governing such a large percentage of regulated sales would undoubtedly stabilize field prices for some time in the future, and also substantially ease Respondent's burden in dealing with pending and new Section 4(e) increases. Such decisions by laying a firm ground work of regulatory principles would facilitate conclusion of rate cases of other producers.

Finally, the establishment of cost-based lawful rate levels for major producers would provide both a test and foundation for future area rates. By easing the strong upward pressure on existing rate levels, such decisions should greatly facilitate the application of area rates which actually reflect producer costs, rather than merely the play of market forces (see *infra*, p. 30). Through establishing the costs of producing gas over a wide variety of areas on a clearly lawful basis, they should provide a standard against which the lawfulness of area rates can be tested.

It is recognized, of course, that Respondent has broad discretion to select a regulatory method. The point here is that Respondent has already exercised that discretion in embarking over six years ago on the major producer rate investigations; as a result, as the dissenting judge has recognized (R. 429) this is now the only workable method presently available for applying Sections 4(e) and 5(a) to producer rates. This does not mean that Respondent can never abandon a method or approach once adopted, but rather that it cannot simply suspend regulation indefinitely in the process of changing course. It follows that there is no alternative to deciding the major producer cases, if Respondent is to regulate producer rates at all during this period.

Inasmuch as decision of the major producer cases would provide substantial protection to gas consumers, Respondent abused its discretion in deciding in Opinion No. 338 to abandon abruptly these cases.

B. Respondent Would Deny Procedural Due Process and Violate the Substantive Standards of the Natural Gas Act If It Sought to Use Its SGP61-1 Price Levels to Set Just and Reasonable Rates

We have shown that decision of the pending Section 5(a) cases would provide substantial consumer protection pending the development of area rates. Decision of these cases is also the only means of providing protection at the present stage of producer regulation.

The court below recognizes that there is a "need for interim regulation" (R. 422). It appears to hold (R. 424, 426) that the present SPG61-1 price levels provide adequate interim rate protection, because they can be used to test the lawfulness of rate increases under Section 4(e) and of high existing rates under Section 5(a). Respondent, of course, has always disclaimed any such use of these prices (R. 343). Since the prices were issued without notice, hearing, or findings, there would appear to be substantial due process problems in employing them to set lawful rates. *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n of Ohio*, 301 U.S. 292; *Colorado-Wyoming Gas Co.* v. *FPC*, 324 U.S. 626, 633-635; *I.C.C.* v. *J-T Transport Co.*, 368 U.S. 81. It follows that the SGP prices, in Respondent's view and in actuality, are useful only in piling up refundable rate increases and conditioning initial rates. This, as we have seen, is no substitute for the actual application of the rate standards of Sections 4 and 5(a).

Furthermore, the Wisconsin and New York Commissions (Br. 29-33) have demonstrated that the SGP61-1 price levels represent nothing more or less than the untested field prices collected in each area in 1959, each "initial price" being the highest certified price and each "increased price" being the average price in each area.

Reliance on untested field price data would, of course, amount to abandonment of rate regulation in any conventional sense, since the play of market forces would be permitted to determine "just and reasonable" and "non-discriminatory" rates. The Natural Gas Act constitutes a legislative finding that public regulation must supplement competition in the marketing of natural gas to ensure fair price levels. *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133, 135 (5th Cir. 1961). The gas producers with Respondent's support[12] have repeatedly, and unsuccessfully, sought to amend the Act to reverse that finding by substituting a "fair field price" standard.[13]

The court below (R. 424), seems to suggest that Respondent need not ascertain a producer's costs or financial requirements, since Respondent can use its "expertise and data on the whole of the market operation" to "evaluate" the prices set by the unregulated

---

[12] Respondent has always recognized the necessity of amending the Act in order to return to the free market conditions existing prior to *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672. See fn. 13ff.

[13] The details are set forth in Respondent's annual reports: 1955, p. 177; 1956, pp. 10, 16, 19; 1957, pp. 25-26; 1958, pp. 15-18; 1959, pp. 12-19; 1960, p. 17.

market. However, even assuming that Respondent would be able to do this, the purpose of the Natural Gas Act is to prevent the producers of a commodity in limited supply from collecting exorbitant profits or economic rents from captive customers. *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 147. Determination of producer costs or financial requirements is obviously a necessary step in measuring producer profits, since this cannot be done merely from comparison of field price levels. Thus, although many other factors can and should affect a producer rate ultimately set by Respondent, it is necessary at the beginning to find out whether the existing level of field prices yields exorbitant, fair or inadequate revenues when compared with financial requirements.

The District of Columbia and Fifth Circuits for this reason have repeatedly held that Respondent cannot rely on field prices alone in setting rates under Sections 4(e) and 5(a), even when the prices are "evaluated" by expert testimony regarding price trends, production incentives, commodity demands and the like. *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829; *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (D.C. Cir. 1957), *cert. denied*, 355 U.S. 904; *Episcopal Theological Seminary* v. *F.P.C.*, 269 F. 2d 228 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 895; *Bel Oil Co.* v. *F.P.C.*, 255 F. 2d 548 (5th Cir. 1958), *cert. denied*, 358 U.S. 804; *Forest Oil Co.* v. *F.P.C.*, 263 F. 2d 622 (5th Cir. 1959); and *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133 (5th Cir. 1961), *cert. denied*, 368 U.S. 823. Respondent, so far as we have been able to ascertain, has at all times acquiesced in these decisions.

It follows that although the court below appears to have held that the SGP61-1 prices represent just and reasonable rate levels, such a conclusion is inconsistent both with procedural due process and the substantive requirements of the Natural Gas Act. If the Court of Appeals has not so held, then its opinion fails to explain how Respondent, in the event it is permitted to terminate the existing, consolidated Section 4(e)-5(a) proceedings, will be able to apply the rate standards of the Act to Phillips and other major producers during this interim period.

CONCLUSION

For these reasons, it is respectfully requested that the opinion below be vacated, and that the Court of Appeals be directed to remand the cause to Respondent with instructions to reopen the proceedings, determine the lawfulness of Phillips' current rates and set future lawful rates, and order refunds of any amounts unlawfully collected during past periods under those rates subject to refund.

Respectfully submitted,

DAVID K. KADANE
EDWARD M. BARRETT
BERTRAM D. MOLL
250 Old County Road
Mineola, New York
Attorneys for Long Island Lighting Company

MORGAN, LEWIS & BOCKIUS
Philadelphia-Washington
Of Counsel

VINCENT P. MCDEVITT
SAMUEL GRAFF MILLER
HENRY P. SULLIVAN
1000 Chestnut Street
Philadelphia 5, Pennsylvania
Attorneys for Philadelphia Electric Company

J. DAVID MANN, JR.
WILLIAM W. ROSS
JOHN E. HOLTZINGER, JR.
1120 Connecticut Avenue
Washington 6, D. C.
Attorneys for The United Gas Improvement Company

August 25, 1962

APPENDIX A

Current Status of Major Independent Producer Consolidated Rate Cases Initiated by FPC

Producer	1960 Direct Sales to Interstate Pipelines: Volume mmcf	Volume: Cumulative Per Cent of Total Industry	Revenue: Thousand Dollars	Revenue: Cumulative Per Cent of Total Industry	Section 4(e) Increases Pending as of 12/31/61: Thousand Dollars	Section 4(e) Increases Pending as of 12/31/61: Cumulative Per Cent of Total Industry	Rate Case: Date Instituted	Rate Case: Docket Number	Status
Phillips Petroleum Co.	688,730	8.50%	$ 98,402	7.78%	$ 27,893[1]	16.29%	10/ 2/48	G- 1148	On Review Supreme Court
Pan American Petroleum Corp.	443,089	13.96	63,356	12.78	4,468	18.90	1/27/56	G- 9279	Field Investigation Completed
Humble Oil & Refining Co.	330,560[2]	18.04	58,213[2]	17.38	9,438[2]	24.41	1/27/56	G- 9287	Field Investigation Completed
Gulf Oil Corp.	316,520[3]	21.94	48,089[3]	21.18	10,406[3]	30.48	2/12/59	G-17813	Awaiting Examiner's Decision
Shell Oil Co.	303,404	25.69	57,385	25.72	12,874	38.00	2/11/60	R160-111	Settled August 1, 1962
Texaco, Inc.	260,263	28.90	46,392	29.39	5,361	41.13	5/25/55	G- 8969	Awaiting Examiner's Decision
Cities Service Co.	241,714[4]	31.88	31,809[4]	31.90	5,875[4 5]	44.56	6/24/57	G-12780	Awaiting Examiner's Decision
Socony Mobil Oil Co., Inc.	217,567[6]	34.56	32,634[6]	34.48	10,145[6]	50.48	4/15/57	G-12401	Field Investigation Completed
The Atlantic Refining Co.	205,622	37.10	30,255	36.87	5,579	53.74	1/27/56	G- 9283	Field Investigation Completed
Union Producing Co.	193,479	39.49	24,721	38.82	3,387	55.72	4/29/59	G-18354	Awaiting Commission's Decision
The Superior Oil Co.	192,371	41.86	37,594	41.79	7,880	60.32	6/ 4/57	G-10501	Field Investigation Completed
Sun Oil Co.	156,411	43.79	25,086	43.78	3,181	62.18	4/29/59	G-18353	Awaiting Examiner's Decision
Champlin Oil & Refining Co.	146,791	45.60	20,035	45.36	12	62.18	1/27/56	G- 9277	Settled, 23 FPC 861 (1960)
Sinclair Oil & Gas Co.	144,714	47.39	20,303	46.96	2,502	63.64	1/27/56	G- 9291	Hearings in Recess
Continental Oil Co.	139,782	49.11	25,076	48.95	1,705	64.64	1/27/56	G-16966	Awaiting Examiner's Decision
Union Oil Co. of California	125,521	50.66	23,966	50.84	1,952	65.78	7/24/56	G-10783	Pending Investigation
Tidewater Oil Co.	119,999	52.14	21,813	52.56	5,001	68.70	1/27/56	G-13310	Settled June 15, 1962
The California Co.	115,278	53.56	24,785	54.52	3,483	70.73	7/24/56	G-10784	Pending Investigation
Union Texas Natural Gas Corp.[7]	105,657	54.86	21,922	56.25	807	71.20	12/ 7/56	G-11563	Settled June 21, 1961
The Ohio Oil Co.	100,666	56.11	13,642	57.33	1,255	71.94	2/29/60	R160-92	Settled June 28, 1962
Amerada Petroleum Corp.	44,986	56.66	6,088	57.81	945	72.49	6/ 8/59	G-18634	Awaiting Commission's Decision
Arkansas Fuel Oil Corp.	23,149	56.95	3,356	58.08	— [5]	72.49	5/18/55	G- 8921	Awaiting Examiner's Decision
Hunt Oil Co.	22,048	57.22	4,054	58.40	1,767	73.52	5/17/56	G-10414	Awaiting Commission's Decision
Sohio Petroleum Co.	19,333	57.46	3,674	58.69	2,441	74.95	4/28/59	G-18355	Awaiting Examiner's Decision
24 Company Total	4,657,654		$ 742,650		$128,357[1]				
Industry Total	8,106,413		$1,265,381		$171,265[1]				

[1] Includes $3,739,655 suspended but not officially listed as suspended as of 12/31/61 due to consolidation in Docket Nos. G-1148, et al., and dismissed thereof in order of September 28, 1960.

[2] Includes Humble Oil & Refining Co. and the Carter Oil Co.

[3] Includes Gulf Oil Corp. and Warren Petroleum Corp.

[4] Includes Cities Service Co., Cities Service Oil Co., Cities Service Gas Producing Co., Cities Service Producing Co., and Cities Service Petroleum Co.

[5] Arkansas Fuel Oil Corp.'s Section 4(e) increases pending as of 12/31/61 are included with Cities Service Co.

[6] Includes Socony Mobil Oil Co., Inc., General Petroleum Corp. and Mobil Producing Co.

[7] Formerly Union Oil & Gas Corp. of Louisiana.

SOURCE: Federal Power Commission, *Direct Sales by Producers of Natural Gas to Interstate Natural Gas Pipeline Companies, 1960;* Federal Power Commission Records.

APPENDIX B

Phillips Petroleum Company Section 4(e) Rate Suspension Proceedings Not Consolidated with Docket Nos. G-1148 et al. and Pending as of December 31, 1961

Purchaser	Rate Schedule Number	Section 4(e) Docket Number	Annual Amount Suspended	Effective Subject to Refund
Arkansas Louisiana Gas Co.	31	G-16113	$ 2,359	2/26/59
Cities Service Gas Co.	257, 298, 321	G-20339	1,527[1]	5/23/60
Colorado Interstate Gas Co.	10, 57, 66	G-18215	27,880[2]	9/18/59
Colorado Interstate Gas Co.	21	G-11622	146,897	6/ 1/57
Colorado Interstate Gas Co.	21	G-20561	151,134	6/ 7/60
Colorado Interstate Gas Co.	240	G-17783	428	7/22/59
Consolidated Gas Utilities Corp.	19	G-12460	63,275	10/12/57
Consolidated Gas Utilities Corp.	19	G-14930	93,522	10/12/58
Consolidated Gas Utilities Corp.	19	G-18273	61,302	10/12/59
Consolidated Gas Utilities Corp.	19	RI60-394	288,598	11/16/60
El Paso Natural Gas Co.	7, 9, 32, 33, 64, 243	G-14115	3,637,284	6/ 1/58
El Paso Natural Gas Co.	7, 9, 32, 64, 243	G-18417	2,212,624	1/ 1/60
El Paso Natural Gas Co.	7, 9, 64, 243	G-20404	1,090,103	6/ 2/60
El Paso Natural Gas Co.	10	G-13734	138,052	5/14/58
El Paso Natural Gas Co.	10, 57, 66	G-18215	—— [2]	9/18/59
El Paso Natural Gas Co.	10, 47, 66, 151, 260, 315, 338	G-20405	137,381	6/ 1/60
El Paso Natural Gas Co.	32, 33, 40, 65, 256, 274	G-20403	3,385,616	6/ 1/60
El Paso Natural Gas Co.	33	G-18418	354,443	1/ 1/60
El Paso Natural Gas Co.	66	G-15315	1,751	12/ 1/58
El Paso Natural Gas Co.	256	G-14006	66	6/ 1/58
El Paso Natural Gas Co.	256	G-15314	145	12/ 1/58
El Paso Natural Gas Co.	256	G-18206	960	9/13/59
El Paso Natural Gas Co.	309	G-18207	830	9/13/59
El Paso Natural Gas Co.	309	G-20523	2,184	6/ 7/60
El Paso Natural Gas Co.	358	RI60-2	4,101	6/ 7/60
El Paso Natural Gas Co.	359	RI60-15	127,609	6/14/60
El Paso Natural Gas Co.	359	RI61-30	25,795	1/ 8/61
El Paso Natural Gas Co.	363	G-20417	134,335	6/ 1/60
El Paso Natural Gas Co.	279	G-16713	34,657	3/25/59

Phillips Petroleum Company Section 4(e) Rate Suspension Proceedings Not Consolidated with Docket Nos. G-1148 et al. and Pending as of December 31, 1961

Purchaser	Rate Schedule Number	Section 4(e) Docket Number	Annual Amount Suspended	Effective Subject to Refund
Kansas-Nebraska Natural Gas Co.	302	G-16311	$ 37	3/ 1/59
Kansas-Nebraska Natural Gas Co.	302	G-19474	24	3/ 1/60
Kansas-Nebraska Natural Gas Co.	302	RI61-64	15	3/ 1/61
Kansas-Nebraska Natural Gas Co.	247	RI60-93	355	7/ 6/60
Kerr-McGee Oil Industries	183, 288	G-20603	972	6/ 9/60
Kerr-McGee Oil Industries	183, 288	RI60-475	381	7/12/60
Kerr-McGee Oil Industries	183, 288	RI61-332	205	6/21/61
La-Tex Petroleum Products Corp.	218, 246	G-16600	181,125[3]	4/ 1/59
Lone Star Gas Co.	324	RI60-201	2,494	8/25/60
Michigan, Wisconsin Pipe Line Co.	4	G-13069	669,305	2/15/58
Michigan, Wisconsin Pipe Line Co.	4	G-19032	1,610,504	1/ 1/60
Michigan, Wisconsin Pipe Line Co.	4	RI60-349	1,634,525	3/ 7/61
Mississippi River Fuel Corp.	22	G-12283	142	9/ 3/57
Mississippi River Fuel Corp.	22	RI60-257	353	9/21/60
Natural Gas Pipeline Co. of America	257	G-11723	240	6/24/57
Natural Gas Pipeline Co. of America	257	G-14258	177	6/23/58
Natural Gas Pipeline Co. of America	257, 298	G-17429	478	6/23/59
Natural Gas Pipeline Co. of America	257, 298, 321	G-20339	—[1]	5/23/60
Natural Gas Pipeline Co. of America	257, 298	RI61-314	579	6/23/61
Natural Gas Pipeline Co. of America	292, 307	G-18272	122	10/10/59
Natural Gas Pipeline Co. of America	292, 307	RI61-456	217	10/10/61
Natural Gas Pipeline Co. of America	298	G-14555	323	7/28/58
Natural Gas Pipeline Co. of America	307	G-15013	52	10/10/58
Natural Gas Pipeline Co. of America	326	RI61-284	16,825	5/27/61
Natural Gas Pipeline Co. of America	332	G-17878	499	8/21/59
Natural Gas Pipeline Co. of America	332	RI60-169	462	8/21/60
Natural Gas Pipeline Co. of America	332	RI61-362	464	8/21/61
Natural Gas Pipeline Co. of America	41	G-12685	22,813	11/ 9/57
Northern Natural Gas Co.	24	G-11641	236,867	6/ 1/57
Northern Natural Gas Co.	24	G-17295	72,528	6/ 1/59
Northern Natural Gas Co.	176	G-15088	44	10/24/58

Phillips Petroleum Company Section 4(e) Rate Suspension Proceedings Not Consolidated with Docket Nos. G-1148 et al. and Pending as of December 31, 1961

Purchaser	Rate Schedule Number	Section 4(e) Docket Number	Annual Amount Suspended	Effective Subject to Refund
Northern Natural Gas Co.	252	G-14009	$ 9,132	6/ 1/58
Northern Natural Gas Co.	262	G-16178	84,816	3/ 1/59
Northern Natural Gas Co.	262	G-19473	89,943	3/ 1/60
Northern Natural Gas Co.	262	RI60-226	802,596	10/ 1/60
Northern Natural Gas Co.	58	RI60-277	978	10/ 1/60
Northern Natural Gas Co.	336	RI62-240	2,131	——
Panhandle Eastern Pipe Line Co.	5	G-16112	384,006	9/ 2/58
Panhandle Eastern Pipe Line Co.	5	G-19845	2,717,526	3/26/60
Panhandle Eastern Pipe Line Co.	5	G-20550	——	3/26/60
Panhandle Eastern Pipe Line Co.	290	RI62-16	618	——
Permian Basin Pipeline Co.	18	G-11849	298,560	7/ 8/57
Permian Basin Pipeline Co.	18	G-17071	101,963	5/ 1/59
Shamrock Oil & Gas Corp.	83	RI61-497	3,421	10/21/61
Southern Natural Gas Co.	219	G-16083	364,702	2/ 1/59
Southern Natural Gas Co.	219	G-17920	85,096	8/ 9/59
Southern Natural Gas Co.	299, 300	G-17156	83,233	5/13/59
Southern Natural Gas Co.	301	G-17267	28,398	5/18/59
Tennessee Gas Transmission Co.	3, 30, 43	G-20542	12,722	6/ 1/60
Tennessee Gas Transmission Co.	20	G-20543	5,698	6/ 1/60
Tennessee Gas Transmission Co.	29	G-17138	9,078	6/ 1/59
Tennessee Gas Transmission Co.	36, 209, 231	G-17280	64,776	6/ 1/59
Tennessee Gas Transmission Co.	39	G-17139	3,025	6/ 1/59
Tennessee Gas Transmission Co.	200	G-17277	3,604	6/ 1/59
Tennessee Gas Transmission Co.	218, 246	G-16600	—— [3]	4/ 1/59
Tennessee Gas Transmission Co.	218	G-18414	14,687	10/ 7/59
Texas Gas Pipe Line Corp.	145	G-19950	35,151	4/ 2/60
Texas Gas Transmission Corp.	202	G-11991	34,082	7/15/57
Transcontinental Gas Pipeline Corp.	149, 220	G-17740	85,940	7/ 9/59

Phillips Petroleum Company Section 4(e) Rate Suspension Proceedings Not Consolidated with Docket Nos. G-1148 et al. and Pending as of December 31, 1961

Purchaser	Rate Schedule Number	Section 4(e) Docket Number	Annual Amount Suspended	Effective Subject to Refund
United Fuel Gas Co.	273	G-14260	$ 61,902	5/16/58
United Fuel Gas Co.	273	G-16712	43,435	4/ 1/59
United Fuel Gas Co.	273	G-20013	135,337	4/ 5/60
West Lake Natural Gasoline Co.	316	G-20349	3,092	1/23/60
West Lake Natural Gasoline Co.	316	RI60-390	3,149	6/24/60
Total			$22,150,782	

[1] Annual amount suspended of $1,527 in Docket No. G-20339 includes purchases by both Cities Service Gas Co. and Natural Gas Pipeline Company of America.

[2] Annual amount suspended of $27,880 in Docket No. G-18215 includes purchases by both Colorado Interstate Gas Co. and El Paso Natural Gas Co.

[3] Annual amount suspended of $181,125 in Docket No. G-16600 includes purchases by both La-Tex Petroleum Products Corp. and Tennessee Gas Transmission Co.

SOURCE: Federal Power Commission records.

APPENDIX C

Comparison of Phillips' Prices Under "New" Rate Schedules,* Not Included in Docket Nos. G-1148 et al., With Area Rate Standards Set Forth in Statement of General Policy No. 61-1 as Amended

Rate Schedule Number	Purchaser	Area Designation	F.P.C. Area Price		Filed Rate as of 12/31/61	Latest Indicated Annual Volume[1] (Mcf)	Annual Revenue at 12/31/61 Filed Rate	Latest § 4(e) Docket Number
			Initial Rates	Increased Rates				
			(14.65 Psia)					
273	United Fuel Gas	So. La.	20.72¢	15.36¢	22.31¢	14,113,490	$3,148,720	G-20013
274	El Paso Natural Gas	N. Mex. P.B.	16.00	11.00	15.56	135,901	21,146	G-20403
275	Wilcox Trend Gathering System	R.R. #2	18.00	14.00	14.37	9,381[2]	1,348	
276	Louisiana Nevada Transit	No. La.	18.28	15.36	12.68	51,542	6,536	
277	Colorado Interstate Gas	Kansas	16.00	11.00	12.09	20,040	2,423	
278	American Louisiana Pipe Line	So. La.	20.72	15.36	20.96	775,426	162,529	
279	El Paso Natural Gas	Wyoming	15.00	12.70	18.04	4,083,663	736,693	G-16713
281	Texas Eastern Transmission	R.R. #2	18.00	14.00	14.37	35,759	5,139	
282	Warren Petroleum Corp.	R.R. #10	17.00	11.00	5.25	7,919	416	
286	Texas Eastern Transmission	R.R. #6	15.00	14.00	15.00	10,572	1,586	
288	Kerr-McGee Oil Industries	R.R. #10	17.00	11.00	11.55	1,471	170	RI61-332
289	Kansas-Nebraska Natural Gas	Okla. Panhandle	17.00	11.00	16.00	3,078	492	
290	Panhandle Eastern Pipe Line	Okla. Panhandle	17.00	11.00	16.00	76,980	12,317	RI62-16
291	Pioneer Gathering System	R.R. #1	15.00	14.00	10.75	3,588,882	385,805	
292	Natural Gas Pipeline Co. of America	Okla. Panhandle	17.00	11.00	17.00	15,638	2,658	RI61-456
294	Northern Natural Gas	R.R. #10	17.00	11.00	16.50	4,823,512	795,879	
296	Panhandle Eastern Pipe Line	Kansas	16.00	11.00	15.00	28,933	4,340	
297	Cities Service Gas Co.	Okla. Other	15.00	11.00	12.00	99,996[3]	12,000	
298	Natural Gas Pipeline Co. of America	Okla. Panhandle	17.00	11.00	17.00	185,721	31,573	RI61-314
299	Southern Natural Gas	So. La.	20.72	15.36	23.09	5,543,188	1,279,922	G-17156
300	Southern Natural Gas	So. La.	20.72	15.36	23.09	2,314,643	534,451	G-17156
301	Southern Natural Gas	So. La.	20.72	15.36	23.08	1,068,388	246,584	G-17267
302	Kansas-Nebraska Natural Gas	Okla. Panhandle	17.00	11.00	16.60	5,174	859	RI61-64
303	Pacific Northwest Pipeline	Colorado	14.60	12.70	15.60	3,122[2]	487	
304	Arkansas Louisiana Gas	No. La.	18.28	15.36	12.68	90,828	11,517	
305	El Paso Natural Gas	Utah			17.26	1,672,496	288,673	
306	Permian Basin Pipeline	R.R. #8	16.00	11.00	16.00	5,744,135	919,062	
307	Natural Gas Pipeline Co. of America	Okla. Panhandle	17.00	11.00	17.00	31,423	5,342	RI61-456
309	El Paso Natural Gas	R.R. #7-C	16.00	11.00	13.68	64,688	8,849	G-20523
310[4]	Montana-Dakota Utilities	Wyoming	15.00	12.70	7.80	39,219	3,059	
312	Texas Gas Gathering	No. La.	18.28	15.63	14.14	971,432	137,360	
313	Panhandle Eastern Pipeline	Kansas	16.00	11.00	15.00	1,557	234	
314	Panhandle Eastern Pipeline	R.R. #10	17.00	11.00	16.00	14,288	2,286	
315	El Paso Natural Gas	R.R. #7-C	16.00	11.00	17.23	78,950	13,603	G-20405
317	Trunkline Gas	R.R. #3	18.00	14.00	20.00	11,171,470	2,234,294	
318	Trunkline Gas	R.R. #3	18.00	14.00	20.00	9,419,400	1,883,880	

Comparison of Phillips' Prices Under "New" Rate Schedules.* Not Included in Docket Nos. G-1148, et al., With Area Rate Standards Set Forth in Statement of General Policy No. 61-1 as Amended

Rate Schedule Number	Purchaser	Area Designation	F.P.C. Area Price		Filed Rate as of 12/31/61	Latest Indicated Annual Volume[1] (Mcf)	Annual Revenue at 12/31/61 Filed Rate	Latest § 4e Docket Number
			Initial Rates	Increased Rates				
			(14.65 Psia)					
319	United Gas Pipe Line	R.R. #6	15.00¢	14.00¢	13.12¢	7,549	$ 991	
321	Cities Service Gas Co.	Kansas	16.00	11.00	13.00	41,822	5,437	G-20339
322	United Gas Pipe Line	R.R. #4	18.00	14.00	14.61	49,629[2]	7,251	
324	Lone Star Gas	Okla. Other	15.00	11.00	13.30	5,223	695	RI60-201
325	Cities Service Gas Co.	Okla. Other	15.00	11.00	11.00	2,014,922	221,641	
326	Natural Gas Pipeline Co. of America	R.R. #9	14.50	14.50	14.13	1,054,802	149,044	RI61-284
327	Panhandle Eastern Pipeline	Kansas	16.00	11.00	13.00	60,872	7,913	
328	United Gas Pipe Line	R.R. #2	18.00	14.00	12.15	206,378	25,075	
329	Commonwealth Oil Co.	So. La.	20.72	15.36	18.46	10,296,874	1,900,803	
330	Tennessee Gas Transmission	So. La.	20.72	15.36	22.26	1,991,336	443,271	
331	West Texas Gathering	R.R. #8	16.00	11.00	16.00	540,000[3]	86,400	
332	Natural Gas Pipeline Co. of America	Okla. Panhandle	17.00	11.00	17.00	34,403	5,849	RI61-362
336	Northern Natural Gas	Okla. Panhandle	17.00	11.00	15.00	76,536	11,480	RI62-240
337	El Paso Natural Gas	N. Mex. San Juan	12.70	12.70	12.68	35,743	4,532	
338	El Paso Natural Gas	N. Mex. P.B.	16.00	11.00	17.07	411,931	70,317	G-20405
339	Coastal States Gas Producing	R.R. #2	18.00	14.00	10.10	457,482	46,206	
342	Transcontinental Gas Pipe Line	So. La.	20.72	15.36	23.45	763,044[3]	178,934	
344	Lone Star Gas	Okla. Carter Knox	16.80	11.00	16.80	92,992	15,623	
345	New York State Natural Gas	Pennsylvania			26.29	1,961,322	515,632	
346	Kerr-McGee Oil Industries	R.R. #10	17.00	11.00	12.00	729,540	87,545	
347	Texas Gas Transmission	No. La.	18.28	15.36	13.41	106,153	14,235	
348	Texas Gas Transmission	No. La.	18.28	15.36	17.79	12,154	2,162	
349	Texas Gas Transmission	No. La.	18.28	15.36	15.36	280,492	43,084	
351	Michigan-Wisconsin Pipe Line	Okla. Panhandle	17.00	11.00	17.00	488,052	82,969	
352	Coastal Transmission Corp.	R.R. #4	18.00	14.00	16.50	501,790	82,795	
353	Panhandle Eastern Pipeline	Okla. Panhandle R.R. #10	17.00	11.00	16.00	1,699,571	271,931	
354	Southern Natural Gas	So. La.	20.72	15.36	22.67	426,087	96,594	
355	Hope Natural Gas	So. La.	20.72	15.36	22.96	130,257	29,907	
357	United Gas Pipe Line	So. La.	20.72	15.36	22.23	151,378[3]	33,651	
358	El Paso Natural Gas	R.R. #7-C	16.00	11.00	14.70	35,400	5,204	RI60-2
359	El Paso Natural Gas	R.R. #8	16.00	11.00	17.16	1,647,154	282,652	RI61-30
360	United Gas Pipe Line	R.R. #2	18.00	14.00	14.18	811,849	115,120	
361	Northern Natural Gas	Okla. Panhandle	17.00	11.00	15.00	34,642	5,196	
362	Colorado Interstate	Okla. Panhandle	17.00	11.00	15.00	71,974	10,796	
363	El Paso Natural Gas	R.R. #8	16.00	11.00	14.70	1,739,800	255,751	G-20417
364	Transwestern Pipeline	R.R. #10	17.00	11.00	17.00	744,000[3]	126,480	

Comparison of Phillips' Prices Under "New" Rate Schedules,* Not Included in Docket Nos. G-1148, et al., With Area Rate Standards Set Forth in Statement of General Policy No. 61-1 as Amended

Rate Schedule Number	Purchaser	Area Designation	F.P.C. Area Price		Filed Rate as of 12/31/61	Latest Indicated Annual Volume[1] (Mcf)	Annual Revenue at 12/31/61 Filed Rate	Latest § 4e Docket Number
			Initial Rates	Increased Rates				
365	Cities Service Gas Co.	Okla. Panhandle	17.00¢	11.00¢	16.00¢	172,926	$ 27,668	
366	Cities Service Gas Co.	Okla. Panhandle	17.00	11.00	16.00	71,566	11,451	
367	Northern Natural Gas	Okla. Panhandle	17.00	11.00	15.00	35,359	5,304	
368	Transwestern Pipeline	R.R. #8	16.00	11.00	16.00	138,545	22,167	
369	Transwestern Pipeline	R.R. #10	17.00	11.00	17.00	356,808[5]	60,657	
370	Texas Eastern Transmission	No. La.	18.28	15.36	15.41	351,040	54,095	
371[6]	Henderson Trust	R.R. #5	14.50	14.50	11.00	73,250	8,058	
372	Coastal Transmission	So. La.	20.72	15.36	20.72	2,575,275[3]	533,597	
374	Transwestern Pipeline	N. Mex. P.B.	16.00	11.00	16.00	522,000[3]	83,520	
375	Colorado Interstate Gas	Kansas	16.00	11.00	17.00	72,000[3]	12,240	
376	Arkansas Louisiana Gas	Okla. Other	15.00	11.00	11.00	372,000[3]	40,920	
377	Michigan-Wisconsin Pipe Line	R.R. #10	17.00	11.00	12.67	9,000,000[3]	1,140,300	
380[7]	Colorado Interstate Gas	Kansas	16.00	11.00	11.00[7]	720,000[3]	79,200	
382	New York State Natural Gas	Pennsylvania			26.29	1,089,592[3]	286,454	
	Total					111,565,819	$20,511,029	

* The last rate schedule included in Phillips' Exhibit 223 in Docket Nos. G-1148 et al., was Rate Schedule #270. This tabulation includes Rate Schedules #271 through #382, excluding those which are no longer in effect and casinghead and liquids contracts.

[1] Volume shown is full-year deliveries for 1961, unless otherwise noted.

[2] No deliveries in 1961. Volume shown is for 1960.

[3] Volume shown is based on estimated first-month deliveries shown on sample billing statement.

[4] Supersedes Rate Schedule #242.

[5] Annualized 1961 Volume.

[6] Supersedes Rate Schedule #60.

[7] Supersedes Rate Schedule #81. The initial price under Rate Schedule #380 is 11.00 cents which became effective 3/8/62; the current price under this rate schedule is 12.50 cents, which was suspended by the FPC in Docket No. RI 62-400.

Code for Area Designation:

So. La.—South Louisiana
No. La.—North Louisiana
N. Mex. P.B.—New Mexico Permian Basin
R.R.—Texas Railroad Commission District
Okla.—Oklahoma

SOURCE: Phillips Petroleum Company, Form 301 for years ended December 31, 1960 and December 31, 1961.

Phillips Petroleum Company rate schedules, supplements and billing statements on file with the Federal Power Commission.

Federal Power Commission, *Statement of General Policy No. 61-1*, issued September 28, 1960, and amendments thereto.

APPENDIX D

Distribution by Price Class of Average Prices Paid for Natural Gas by Interstate Pipelines in South Louisiana in 1960

Price Class	1960 Purchases Mcf	Per Cent of Total
	(15.025 Psia)	
6.00- 6.99	2,221,736	0.11%
7.00- 7.99	666,642	0.03
8.00- 8.99	23,309,679	1.14
9.00- 9.99	38,811,248	1.90
10.00-10.99	35,714,274	1.75
11.00-11.99	40,272,392	1.97
12.00-12.99	2,677,253	0.13
13.00-13.99	495,768	0.02
14.00-14.99	2,670,530	0.13
15.00-15.99	37,982,695	1.86
16.00-16.99	5,263,682	0.26
17.00-17.99	42,823,701	2.09
18.00-18.99	180,441,826	8.83
19.00-19.99	158,926,371	7.77
20.00-20.99	252,391,713	12.35
21.00-21.99	337,183,253[1]	16.49
22.00-22.99	402,139,026	19.67
23.00-23.99	423,440,530	20.71
24.00-24.99	56,830,783	2.78
Total	2,044,263,102	100.00%
Average Price 20.57¢ Purchases Above 21.25¢	1,128,327,240	55.19%

Source: F.P.C. Form 2 Reports, Year ended December 31, 1960.

[1] 245,916,901 Mcf in this price class sold for more than 21.25 cents, the FPC "new gas" ceiling.

1960 South Louisiana Jurisdictional Sales by 13 Producers at Prices Above 21.25 Cents

(Mcf at 15.025 Psia)

Producer	Total	Estimated Not Subject to Refund[1]
Amerada	4,024,376	99,837
Cities Service	6,661,308	1,042,637
Continental	82,402,402	2,921,393
Gulf	27,100,259	5,646,958
Hunt Oil	8,892,149	26,199
Ohio	7,071,256	0
Phillips	42,697,022	23,950,166
Shell	132,882,136	14,009,648
Sohio	11,926,080	978,865
Sun	34,002,685	18,549,843
Texaco	50,591,625	47,766,413
Tidewater	14,011,377	11,382,513
Union Producing	13,806,581	8,006,985
Total 13 Producers	436,069,256	134,381,457
Total All Producers	1,128,327,240	

Source: F.P.C. Form 2 Reports, Year ended December 31, 1960.

[1] Sales not subject to refund include certain sales which are not identified as to their interstate or intrastate nature; and rate schedules under which no actual collections were made subject to refund.